

OVERVIEW of the Daf

1) Identifying the author of the Mishnah (cont.)

The Gemara concludes citing the Baraisa that presents two versions of the dispute in the Mishnah.

2) **MISHNAH:** The Mishnah presents a dispute between Beis Shammai and Beis Hillel concerning the halacha where there is an uncertainty whether an heir or the one bequeathing property died first.

3) Collecting land for a loan

A Mishnah rules that one could collect a documented loan from encumbered property but one may only collect unencumbered property if the loan is not documented.

Shmuel inquires whether a stipulation that any property can be acquired is binding.

The Gemara elaborates on the question.

R' Yosef cites a Mishnah to prove that one can encumber property that one does not yet own.

Rava refutes this proof.

R' Chana cites our Mishnah to prove that one can encumber property that one does not yet own.

R' Nachman refutes this proof.

R' Ashi rejects R' Nachman's refutation and offers his own alternative refutation to R' Chana's proof.

R' Yaakov of Nehar Pekod in the name of Ravina suggests another proof.

This suggestion is also refuted.

R' Mesharshiya in the name of Rava offers another proof.

This suggestion is also refuted.

Further related questions are presented.

R' Nachman and R' Huna disagree about the halacha of

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Distinctive INSIGHT

The mitzvah for the orphans to pay their father's loan

מצוה על היתומים לפרוע חובת אביהם

Someone borrowed money, and he wrote in the loan document that he was not only obligating the property which he currently owned for payment of the loan, but he also committed to the lender any property which he would acquire in the future (דאיִקני). Shmuel asked whether the lender could, in fact, collect from this property which was acquired subsequent to the loan.

Rav Channa cites a Baraisa to resolve this question. A house collapsed on a man and his father, killing them both. The man owed money for a loan. The heirs of the father claimed that the son died first, and then the father died. When the son died, he did so without inheriting from his father for even a moment. When the father then died, his assets cannot be collected by the son's creditors. The creditor, however, claims that the father died first, thus allowing the son, his debtor, to inherit from the father, at least for a moment, before he then died. Therefore, the loan of the son should be collected from assets of the father, which were owned momentarily by the son. Rav Channa notes that property claimed by the lender was acquired by the son only subsequent to when the money was lent, and yet it is being claimed as payment for the loan. We see that דאיִקני is collectable.

The Gemara rejects this proof, as the reason the lender wishes to collect is not that the inherited assets were technically obligated to be used for payment, but rather that the orphans have a mitzvah to pay the loan of their father. Tosafos (ד"ה מצוה) explains that the Gemara's understanding is that this mitzvah for the orphans is not just a mitzvah which they can choose to fulfill, but it is possible for the court to actually enforce the collection of this loan on the behalf of their father. This obligation, however, is only applicable where the father left land which was subjugated for the loan, but not where the father only left movable objects. Rosh also rules that where there is only מטלטלין, there is a mitzvah for the orphans to pay the loan, but this is not enforceable.

Rashba (קובץ שיעורים) lists three levels of payment of a father's loan. If the father left no assets from which to collect, the orphans have a mitzvah to pay the loan. This is a חובה. If the father left only movable objects, there is a mitzvah to pay the loan, and the court enforces the payment. If the father left land, the court would even enforce payment to the extent of forcefully taking the property.

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REVIEW and Remember

1. What is the point of dispute between Beis Shammai and Beis Hillel?

2. Are orphans obligated to pay their father's debt?

3. Is a postdated contract valid?

4. What is done with land that is encumbered to two creditors?

HALACHAH Highlight

Honoring checks written by a father who is deceased

מצוה על היתומים לפרוע חובת אביהן

It is a mitzvah for the orphans to repay their father's debt

The Gemara makes it clear that although Biblically a borrower's property is not encumbered, nevertheless there is a mitzvah for orphans to pay off their father's debt. This principle is relevant for the following common question. A person sent a number of checks to different tzedaka organizations and before they were cashed the man died. His children wanted to know whether they are obligated to honor those checks and allow the different organizations to cash their checks. The essence of the question was whether the children should be exempt from honoring those checks since according to secular law the check becomes invalid once their father died or perhaps they nevertheless have an obligation to honor their father by paying his debts. The children turned to the author of Teshuvos Shevet Halevi for guidance.

Teshuvos Shevet Halevi¹ wrote that the halacha depends on the details of the case. If the date on the check preceded the father's death it is treated like any other debt and the father's property was encumbered towards the debt and the children have a mitzvah to repay their father's debt. On the

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a person who borrowed from different people and then purchased one parcel of land.

Ravina reports about R' Ashi's changing position about this matter.

The Gemara rules that the two creditors split the land.

This halacha is unsuccessfully challenged. ■

other hand, if the date of the check was after than the father's death they are exempt from honoring the check since their father's property was never encumbered towards the debt. There was nothing more than a vow and the children are not obligated to honor their deceased father's vows.

Sefer Even Shoham² disagrees with Shevet Halevi since the halacha is that children are not obligated to pay their father's tzedaka pledges. For that reason they would not be obligated to honor even the checks whose date preceded the death of their father. The real issue is whether we see a check as though the money has already been collected (כגבוי דמי) or not. If we adopt this approach we would say that the checks dated before the father's death must be honored since the money is seen as though it was collected. Those checks dated after the father's death cannot be considered as though the money was collected and there is no obligation for the children to honor those checks. ■

1. שו"ת שבט הלוי ח"י ס"י רע"ז.

2. ספר אבן שוהם חו"מ ס"י ק"ח אות ז'. ■

STORIES Off the Daf

The wicked borrows and does not repay

"מצוה על היתומים לפרוע חוב אביהם..."

On today's daf we find that it is a mitzvah for orphans to pay off their father's debts.

Rav Wolbe, zt"l, would beg his students to be very careful to live within their means and above all, never to assume a debt if they have no clear way to repay. The only exception to this rule is a case where there is danger to one's life or health. Only in such extreme cases is one required to do whatever he can, including borrowing whatever is necessary to pay for proper treatment.

The mashgiach would offer a common example of misplaced spending. "Why do so many avreichim take cabs instead of buses? Isn't it better to limit

expenses by paying the minimal bus fare instead of the exorbitant cab fee? If this is not feasible for some reason, well and good, but all too often, people use cabs for no reason whatsoever."

The Mashgiach was not merely giving others direction. Time and time again, the yeshiva offered to pay for cabs from his home to the yeshiva, but the mashgiach refused. He preferred to take a daily bus instead of spending money unnecessarily.

Rav Moshe Shmuel Shapiro, zt"l, also spoke out against the prevalent custom to borrow from gemachim, even when the borrower did not have a clear way to pay off the debt. "A bochur certainly has no need to borrow money since all of his needs are taken care of by the yeshiva. But even for a married man who needs the money, taking out loans is a very dangerous practice. A certain gadol hador re-

ceived one pound sterling from the kollel for monthly expenses. He was missing exactly five grushim a month to make ends meet and he did not hesitate to borrow the money. But as the months turned into years, the five grushim a month turned into a monstrous debt of its own. We learn from here the vital importance of living within one's means!"¹ ■

1. אבני שלמה, ע"מ"ה וק"י ■

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Shulchan Aruch (C.M. 107:1) rules that orphans must repay their father's loan only if they inherited land from him. If they inherited only מטלטלין, we do not force them to pay, but they have a mitzvah to do so. He adds that the Geonim, however, rule that we do enforce payment even from מטלטלין, and even for an oral loan, and even if the father did not say "דאיקני". ■